

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Application of
California-American Water Company (U
210 W) for an order authorizing it to
increase its rates for water service in its Los
Angeles District to increase revenues by
\$2,020,466 or 10.88% in the year 2007;
\$634,659 or 3.08% in the year 2008; and
\$666,422 or 3.14% in the year 2009

A.06-01-005

**REPLY COMMENTS OF CALIFORNIA-AMERICAN WATER COMPANY ON THE
PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE WALWYN**

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Date: June 4, 2007

I. INTRODUCTION

Pursuant to Rule 14.3(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC”), California-American Water Company (“CAW”) hereby files its reply comments on the Proposed Decision of Administrative Law Judge Walwyn (“PD”), issued May 7, 2007. In addition to CAW, the California Water Association (“CWA”), California Water Service Company (“CalWater”) and the Division of Ratepayer Advocates (“DRA”) filed comments on the PD on May 30, 2007. The comments of CWA and CalWater were accompanied by motions for party status.

CAW will agrees with the comments filed by CWA and CalWater and urges that their motions for party status be granted. If the CPUC is planning to address the issue of a Water Revenue Adjustment Mechanism (“WRAM”) related return on equity (“ROE”) reduction in this proceeding, an issue with far-reaching policy implications for all Class A water utilities, then it should allow CWA and CalWater to present their views on the subject.

In its comments, DRA addresses: (1) the leverage adjustment for CAW’s ROE; (2) the WRAM-related ROE reduction; (3) the proposed Infrastructure System Replacement Surcharge (“ISRS”); and (4) the proposed \$11,000 penalty for notice deficiencies. CAW discussed the first three issues at length in its opening comments and will not repeat that discussion here. CAW will therefore focus on the penalty issue in these reply comments.

II. THE \$110,000 PENALTY FOR NOTICE DEFICIENCIES PROPOSED BY DRA IS UNJUSTIFIED

CAW is deeply regrets its failure to provide notice of past general rate case applications on the City of Inglewood and the County. The past notice failures were unintentional and inadvertent and are greatly mitigated by the fact that notice of each application was given to each ratepayer. CAW has initiated a plan to prevent any similar notice deficiencies in the future. In its comments, DRA urges the CPUC to increase the penalty imposed on CAW

from the \$11,000 set forth in the PD¹ to \$110,000.² The penalty recommended by DRA, however, is not warranted under the circumstances and is unsupported by CPUC case law.

Under Sections 2107 and 2108 of the Public Utilities Code, the CPUC has the authority to assess monetary penalties (from \$500 - \$20,000 per offense) on a public utility that violates a CPUC Rule. Fines must not be disproportionate to the nature and scope of the violations.³ According to CPUC case law, the standards used to assess fines are (1) the severity of the offense; (2) the conduct of the utility; (3) the financial resources of the utility; (4) the totality of the circumstances; and (5) the role of precedent.⁴ Based upon these standards, the fine recommended by DRA is not warranted.

A. Severity of the Offense

In assessing the severity of the offense, the CPUC first considers “[v]iolations which caused actual physical harm to people or property [as] the most severe, with violations that threatened such harm closely following.”⁵ The CPUC next considers economic harm, or the amount of expense which was imposed upon customers, and the unlawful benefits gained by the utility.⁶ Third, the CPUC considers whether the violation harmed the regulatory process. Harm to the regulatory process involves “violations of reporting or compliance requirements.”⁷ Finally, The CPUC considers the number and scope of violations, or, in other words, whether a violation was an ongoing compliance deficiency and whether the violation affected a large number of customers.

CAW’s notice deficiencies plainly did not cause actual or threaten to cause

¹ PD, p. 63. While CAW does not necessarily agree with the \$11,000 penalty in the PD, it is certainly more appropriate than DRA’s proposal.

² DRA Comments, p. 2.

³ California Water Service Co., D.04-07-033, 2004 Cal. PUC LEXIS 329.

⁴ Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Adopted by the Commission in Decision 97-12-088, D.98-12-075, (1998) 84 CPUC 2d 182, 1998 Cal. PUC LEXIS 1016 (“Standards of Conduct”)

⁵ Standards of Conduct, 1998 Cal. PUC LEXIS 1016, *54.

⁶ Id.

⁷ Id.

physical harm – they were regulatory violations. Similarly, the deficiencies caused no economic harm because every customer did receive individual notice, and, in several of the rate case cycles since 1984, customers in the affected Baldwin Hills service area actually experienced rate decreases. Any harm caused by the notice deficiencies is limited to regulatory harm.

B. Conduct of the Utility

The CPUC also considers the conduct of the utility in assessing fines. This includes examining the utility's actions to prevent a violation, to detect a violation, and to disclose and rectify a violation.⁸ While the notice deficiencies discussed here were absolutely unintentional, it is clear that CAW's internal processes should have been more carefully monitored to verify the completeness of its service lists. Immediately after CAW learned of this deficiency, it commenced a thorough internal review of all existing service lists for all districts, advice letter mailing lists, and other similar lists. Additionally, CAW has since hired in-house regulatory counsel who has worked closely with internal personnel and the CPUC's Public Advisor to ensure that such notice deficiencies are not repeated.

C. Financial Resources of the Utility

The CPUC next considers the financial resources of the utility.⁹ CAW readily acknowledges and appreciates its notice failures and assures the CPUC that the internal problem has been rectified and that it will not recur. A larger fine will not advance the CPUC's oversight any more than has already occurred.

D. Totality of the Circumstances

The CPUC "specifically [tailors] the package of sanctions, including any fine, to the unique facts of the case."¹⁰ It reviews the facts of each case that "tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing."¹¹ The critical fact on this

⁸ Id., *57-*58.

⁹ Id., *58-*59.

¹⁰ Id., *59.

¹¹ Id.

issue is that CAW did serve notice of each of its general rate case applications on each of its customers. CAW intended to serve, believed that it had served, and had a history of service of notice on Inglewood (although in some instances at an outdated address). CAW has never sought to exclude any interested party from CPUC proceedings. Moreover, in this proceeding alone CAW has made some 20-plus outreach presentations to community groups and city councils in the Los Angeles District.

E. The Role of Precedent

The CPUC has held that “the parties and, in turn, the Commission will be expected to explicitly address those previously issued decisions which involve the most reasonably comparable factual circumstances and explain any substantial differences in outcome.”¹² Three relevant cases are discussed below.

In California Water Service Co.,¹³ the CPUC assessed a fine of \$75,000 against California Water Service Company (“CalWater”) and reduced CalWater’s ROE by 50 basis points for failure to file an application for approval of three agreements to acquire properties and failure to obtain CPUC authorization for rates changed in the acquired areas, in violation of the specific directives in a prior CPUC decision. CalWater delayed filing an application for 2-3 years, but the CPUC declined to impose fines for each day of violation as disproportionate to the utility’s financial resources and the amount necessary to deter future violations. The CPUC instead treated each failure to timely file as a single violation.

In Southern California Water Co.,¹⁴ the CPUC imposed a fine of \$1,095,000 and suspended \$915,000 of the fine unless Southern California Water Company (“SoCal”) failed to comply with the decision. The CPUC concluded that So Cal Water violated Section 851 in failing to file applications for CPUC approval to lease utility property for a period of eight years. The CPUC found that SoCal caused economic harm to ratepayers (the arrangements resulted in a

¹² Id. at *60.

¹³ 2004 Cal. PUC LEXIS 329

¹⁴ Southern California Water Co., D.04-03-039, 2004 Cal. PUC LEXIS 95

gain for shareholders) and harmed the regulatory process.

In Southern California Edison Co.,¹⁵ the CPUC imposed a fine of \$656,000 against Southern California Edison Company (“SCE”) for 30 violations in failing to correct a serious safety violation in a timely fashion and for 56 violations of General Order 165 and the failure to identify unsafe operating conditions. The CPUC found that there was a strong potential for causing physical harm to the public and that SCE knew or should have known of the violations.

These cases illustrate the CPUC’s policy of penalizing the willful disregard of explicit CPUC directives, the encumbrance of utility property in violation of the Public Utilities Code while shareholders profit, and the failure to correct an operating conditions that could have resulted in serious physical harm. CAW’s notice deficiencies do not rise to the level of public harm evidenced in these cases. Under the circumstances, the fine propose by DRA is excessive.

III. CONCLUSION

The arguments set forth by DRA are without merit. CAW urges the CPUC reject changes to the PD suggested by DRA and instead adopt the changes to the PD set forth in CAW’s comments on the PD.

Dated: June 4, 2007

Respectfully submitted,

STEEFEL, LEVITT & WEISS
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By: /s/ Lori Anne Dolqueist
Lori Anne Dolqueist
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COMPANY

¹⁵ Southern California Edison Co., D.04-04-065, 2004 Cal. PUC LEXIS 207

PROOF OF SERVICE

I, Yolanda Cano, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is STEEFEL, LEVITT & WEISS, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. On June 4, 2007, I served the within:

REPLY COMMENTS OF CALIFORNIA-AMERICAN WATER COMPANY ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE WALWYN

on the interested parties in this action addressed as follows:

See attached service list

- ☒ **(BY HAND SERVICE)** By causing such envelope to be delivered by hand, as addressed by delivering same to SPECIALIZED LEGAL SERVICES with instructions that it be personally served.
- ☒ **(BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Steefel, Levitt & Weiss, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Steefel, Levitt & Weiss for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.
- ☒ **(BY PUC E-MAIL SERVICE)** By transmitting such document(s) electronically from Steefel, Levitt & Weiss, San Francisco, California, to the electronic mail addresses listed above. I am readily familiar with the practices of Steefel, Levitt & Weiss for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 1.1 of the Public Utilities Commission of the State of California and all protocols described therein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 4, 2007, at San Francisco, California.

/s/ Yolanda Cano

Yolanda Cano

SERVICE LIST
A.06-01-005
Last changed: June 1, 2007

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A.06-01-005

Last changed: June 1, 2007

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